

भारत का राजपत्र The Gazette of India

असाधारण

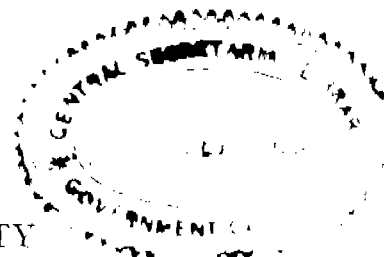
EXTRAORDINARY

भाग 2—खंड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं० 35] नई दिल्ली, बुधवार, जु 25, 1969/श्रावण 3, 1891

No. 35] NEW DELHI, FRIDAY, JULY 25, 1969/SRAVANA 3, 1891

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on the 25th July, 1969:—

BILL No. 65 OF 1969

A Bill to provide for the abolition of the Legislative Council of the State of Punjab and for matters supplemental, incidental and consequential thereto.

Be it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Punjab Legislative Council (Abolition) Act, 1969.

Short
title
and
commen-
Commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Defini-
tion

(a) "appropriate Government" means, as respects a law relating to a matter enumerated in List I in the Seventh Schedule to the Constitution the Central Government, and as respects any other law, the State Government;

"article" means an article of the Constitution;

(c) "Council" means the Legislative Council of the State of Punjab;

(d) "law" includes any enactment, Ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having the force of law in the whole or any part of the State of Punjab;

(e) "Legislative Assembly" means the Legislative Assembly of the State of Punjab.

Abolition
of the
Council.

3. (1) The Legislative Council of the State of Punjab is hereby abolished.

(2) On the abolition of the Council, every member thereof shall cease to be such member.

Amend-
ment of
article
168.

4. In sub-clause (a) of clause (1) of article 168, the word ", Punjab," shall be omitted.

Amend-
ment of
Act 43 of
1950.

5. In the Representation of the People Act, 1950,—

(a) in the Third Schedule, entry No. 7 relating to Punjab shall be omitted;

(b) in the Fourth Schedule, the heading "Punjab" and the entries thereunder shall be omitted.

Repeal
of Deli-
mitation
of
Council
Consti-
tuencies
(Punjab)
Order,
1951.

6. The Delimitation of Council Constituencies (Punjab) Order, 1951, is hereby repealed.

Provi-
sion as to
pending
Bills.

7. (1) A Bill pending in the Council immediately before the commencement of this Act which has not been passed by the Legislative Assembly shall lapse on the abolition of the Council.

(2) A Bill pending in the Council immediately before the commencement of this Act which has been passed by the Legislative Assembly shall not lapse on the abolition of the Council, but on such abolition shall be deemed to have been passed before such commencement by both Houses of the Legislature of the State of Punjab in the form in which it was passed by the Legislative Assembly.

(3) If a Bill which having been passed by the Legislative Assembly is, before the commencement of this Act, either rejected by the Council or passed by the Council with amendments, the Legislative Assembly may, after such commencement, pass the Bill again with or without such amendments, if any, as have been made by the Council and the Bill so passed shall be deemed to be a Bill introduced in and passed by the Legislative Assembly after the commencement of this Act.

Power to
adapt
laws.

8. The appropriate Government may, before the expiration of one year from the commencement of this Act, by order, make such adaptations and modifications of any law made before such commencement,

whether by way of repeal or amendment as may be necessary or expedient in consequence of the abolition of the Council under section 3, and thereupon every such law shall have effect subject to the adaptations and modifications so made.

9. Notwithstanding that no provision or insufficient provision has been made under section 8 for the adaptation or modification of a law made before the commencement of this Act, any court, tribunal or authority required or empowered to enforce such law may construe the law in such manner, without affecting the substance, as may be necessary or proper on account of the abolition of the Council, in regard to the matter before the court, tribunal or authority.

Power to
construe
laws.

STATEMENT OF OBJECTS AND REASONS

Under article 169 of the Constitution, Parliament may, by law, provide for the abolition of the Legislative Council of a State having such a Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting. On 24th April, 1969, the Legislative Assembly of the State of Punjab has passed a resolution, in terms of article 169 of the Constitution, for the abolition of the Legislative Council of that State. In pursuance of this resolution, it is proposed to abolish the Legislative Council of the State of Punjab. The Bill seeks to give effect to this object and also provides for matters supplemental, incidental and consequential to such abolition.

NEW DELHI;
The 15th July, 1969.

P. GOVINDA MENON.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 8 of the Bill empowers the appropriate Government to make such adaptations and modifications of any law made before the commencement of the Act as may be necessary or expedient in consequence of the abolition of the Legislative Council of the State of Punjab under clause 3. This power will be available only for a period of one year from the commencement of the Act. The adaptations and modifications cannot affect the substance of the law adapted.

The delegation of legislative power is of a normal character.

BILL No. 63 OF 1969

A Bill further to amend the Central Sales Tax Act, 1956 and to provide for certain other matters.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Central Sales Tax (Amendment) Act, 1969.

Amend-
ment of
section
2.

2. In section 2 of the Central Sales Tax Act, 1956 (hereinafter referred to as the principal Act), in clause (j), for the words "and determined in the prescribed manner", the words "and determined in accordance with the provisions of this Act and the rules made thereunder" shall be, and shall be deemed always to have been, substituted.

74 of 1956

Amend-
ment of
section
6.

3. In section 6 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be, and shall be deemed always to have been, inserted, namely:—

"(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State

trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.”;

(b) in sub-section (2), for the word, brackets and figure “sub-section (1)”, the words, brackets, figures and letter “sub-section (1) or sub-section (1A)” shall be, and shall be deemed to have been, substituted with effect from the 1st day of October, 1958.

4. In section 8 of the principal Act, in sub-section (2A), for the words, brackets and figures “Notwithstanding anything contained in sub-section (1) or sub-section (2)”, the words, brackets, figures and letter “Notwithstanding anything contained in sub-section (1A) of section 6 or in sub-section (1) or sub-section (2) of this section” shall be, and shall be deemed to have been, substituted with effect from the 1st day of October, 1958.

Amendment of section 8.

5. After section 8 of the principal Act, the following section shall be, and shall be deemed always to have been, inserted, namely:—

Insertion of new section 8A.

“8A. (1) In determining the turnover of a dealer for the purposes of this Act, the following deductions shall be made from the aggregate of the sale prices, namely:—

Determination of turnover.

(a) the amount arrived at by applying the following formula—

$$\frac{\text{rate of tax X aggregate of sale prices}}{100 \text{ plus rate of tax}}$$

Provided that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

Explanation.—Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax;

(b) the sale price of all goods returned to the dealer by the purchasers of such goods,—

(i) within a period of three months from the date of delivery of the goods, in the case of goods returned before the 14th day of May, 1966;

(ii) within a period of six months from the date of delivery of the goods, in the case of goods returned on or after the 14th day of May, 1966:

Provided that satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, re-assess the tax payable by the dealer under this Act; and

(c) such other deductions as the Central Government may, having regard to the prevalent market conditions, facility of trade and interests of consumers, prescribe.

(2) Save as otherwise provided in sub-section (1), in determining the turnover of a dealer for the purposes of this Act, no deduction shall be made from the aggregate of the sale prices."

Substitu-
tion of
new sec-
tion for
section
9

6. For section 9 of the principal Act, the following section shall be and shall be deemed always to have been, substituted, namely:—

Levy and
collection
of tax
and
penalties.

"9. (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods.

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transference of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section.

(3) The proceeds in any financial year of any tax, including any penalty, levied and collected under this Act in any State (other than a Union territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds

attributable to Union territories shall form part of the Consolidated Fund of India.”.

7. Section 10A of the principal Act shall be, and shall be deemed to have been, renumbered with effect from the 1st day of October, 1958 as sub-section (1) of that section and after the said sub-section (1), the following sub-section shall be, and shall be deemed to have been, inserted with effect from the said day, namely:—

Amend-
ment of
section
10A.

“(2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of section 9—

(a) in the case of an offence falling under clause (b) or clause (d) of section 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods;

(b) in the case of an offence falling under clause (c) of section 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed.”.

8. In section 13 of the principal Act, in clause (f) of sub-section (1), for the word, brackets and figure “sub-section (3)”, the word, brackets and figure “sub-section (2)” shall be, and shall be deemed always to have been, substituted.

Amend-
ment of
section
13

9. (1) Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, any assessment, re-assessment, levy or collection of any tax made or purporting to have been made, any action or thing taken or done in relation to such assessment, re-assessment, levy or collection under the provisions of the principal Act before the 9th day of June, 1969, shall be deemed to be as valid and effective as if such assessment, re-assessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and accordingly—

Validation
of assess-
ments, etc.

(a) all acts, proceedings or things done or taken by the Government or by any officer of the Government or by any other authority in connection with the assessment, re-assessment, levy or collection of such tax shall, for all purposes, be deemed to be, and to have always been, done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax; and

(c) no court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person—

(a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, re-assessment, levy or collection of tax referred to in sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the principal Act as amended by this Act.

Exemption from liability to pay tax in certain cases.

10. (1) Where any sale of goods in the course of inter-State trade or commerce has been effected during the period between the 10th day of November, 1964 and the 9th day of June, 1969, and the dealer effecting such sale has not collected any tax under the principal Act on the ground that no such tax could have been levied or collected in respect of such sale or any portion of the turnover relating to such sale and no such tax could have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in section 9 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turnover relating to such sale.

(2) For the purposes of sub-section (1), the burden of proving that no tax was collected under the principal Act in respect of any sale referred to in sub-section (1) or in respect of any portion of the turnover relating to such sale shall be on the dealer effecting such sale.

Repeal and saving.

11. (1) The Central Sales Tax (Amendment) Ordinance, 1969, is ~~4 of 1969~~, hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act as if this Act had come into force on the 9th day of June, 1969.

STATEMENT OF OBJECTS AND REASONS

The levy of tax on inter-State sales under the Central Sales Tax Act, 1956, commenced from the 1st July, 1957. The scheme of the Act as originally intended was that while matters of a substantive nature, such as the incidence of tax, the point of levy, the determination of turnover for purposes of calculation of tax including exemptions which should be allowed in determining such turnover, should be regulated by the provisions made in that behalf in the Act itself or in rules made under the Act, matters of a procedural nature, such as the procedure for collection of tax, the machinery for collection of tax should be regulated by the provisions contained in the local sales tax law of the appropriate State. However, on the 10th November, 1964, the Supreme Court in the case of the *State of Mysore vs. Yaddalam Lakshminarasimhiah Setty & Sons* (hereinafter referred to as the Yaddalam case) held that the provisions of the Act would have the effect of incorporating not only the procedural provisions of the local sales tax laws but also the substantive provisions thereof. The Court was concerned in this case with a factual situation which had arisen before the Act was amended in 1958 and in arriving at its conclusion the Court relied upon the wording of section 8(2) and section 9(1) of the Act as they stood before the Act was amended in 1958. There was a conflict of opinion amongst the High Courts as to whether the ruling of the Supreme Court in the aforementioned case held good even with reference to the provisions of the Act as amended in 1958. In a series of decisions in 1968, the Supreme Court held that its decision in Yaddalam case applied with equal force even after the amendment of the Act in 1958. The Court also extended the scope of its ruling in Yaddalam case and held that the provisions of the sales tax law of the appropriate State would apply not only in respect of point of levy of Central Sales Tax but also in respect of deductions to be made in the determination of turnover for the purposes of calculating the tax payable under the Central Sales Tax Act.

2. These judgments, therefore, went against the scheme which was sought to be given effect to in the Act and in accordance with which the Act had been administered all along. As a result of these judgments, the State Governments would have been required to refund a substantial portion of the taxes levied and collected under the Act. It, therefore, became necessary to promulgate the Central Sales Tax (Amendment) Ordinance, 1969 (4 of 1969) on the 9th June, 1969.

3. The Ordinance amended the Central Sales Tax Act, 1956, with retrospective effect to make it clear that tax on an inter-State sale of goods would be payable notwithstanding the fact that no tax would have been levied under the sales tax law of the appropriate State, had the sale taken place inside such State at that point. Further, the Ordinance provided that turnover for the purposes of assessment of tax would be

determined in accordance with the provisions of the Act and the rules made thereunder. The Ordinance also validated the taxes imposed, assessed or collected by the State Governments up to the date of commencement of the Ordinance. The Ordinance made suitable provisions to safeguard the interests of dealers who, relying upon the Supreme Court judgment in Yaddalam case, did not collect tax from their customers.

4. This Bill seeks to replace the Ordinance, subject to certain changes of a consequential or clarifying nature, by an Act of Parliament. The notes on clauses explain the provisions of the Bill.

NEW DELHI;

P. C. SETHI.

The 18th July, 1969.

RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 8/24/69-ST(2), dated the 18th July, 1969 from Shri Prakashchand B. Sethi, Minister of State in the Ministry of Finance to the Secretary, Lok Sabha.]

The Vice-President acting as President, having been apprised of the subject matter of the above Bill, has been pleased to recommend, in pursuance of clauses (1) and (3) of article 117 and clause (1) of article 274 of the Constitution of India, the introduction and consideration of the Bill in the Lok Sabha.

Notes on clauses

Clause 2.—This clause seeks to amend, with retrospective effect, the definition of the term “turnover” to make clear that the turnover shall be determined in accordance with the provisions of the Act and the rules made thereunder.

Clause 3.—This clause seeks to insert with retrospective effect a new sub-section (1A) in section 6 of the principal Act. New sub-section (1A) seeks to provide that tax on inter-State sale of any goods shall be payable notwithstanding the fact that no tax would have been levied under the sales tax law of the appropriate State if that sale had taken place inside that State. The other amendment which this clause seeks to make is of a consequential nature.

Clause 4.—This is of a consequential and clarifying nature.

Clause 5.—This clause seeks to insert with retrospective effect a new section 8A in the principal Act. New section 8A provides for the deductions which should be allowed in determining the turnover of a dealer for the purposes of the Act. The deductions, provided in rule 11(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957, as amended from time to time, regarding the tax element and the goods returned to a dealer, have been incorporated in the section. To cover contingencies which may arise in future, power is also being taken to prescribe other deductions having regard to the prevalent market conditions, facility of trade and interests of consumers.

Clause 6.—This clause seeks to substitute with retrospective effect section 9 of the principal Act by a new section. In respect of first inter-State sale, tax will be payable in the State wherefrom the movement of the goods commenced. In the case of a second or subsequent sale not covered by sub-section (2) of section 6, the tax will be levied and collected in the State where the registered dealer effecting the subsequent sale has his place of business. Power is also being taken by the Central Government to make rules for the purpose of providing for the assessment, collection and enforcement of payment of tax under the Act in any territory where there is no local sales tax law in force.

It has also been made clear that for the purposes of assessment, collection and payment of tax, the Act will attract the procedural provisions relating to assessment, collection and payment of tax under the general sales tax law of the appropriate State.

Clause 7.—This clause seeks to transpose, without any change, the existing provisions regarding collection of penalty contained in sub-section (2) of section 9 of the principal Act to section 10. The transposition has become necessary as the other provisions of section 9 are being substituted with effect from the commencement of the principal Act.

Clause 8.—This is consequential.

Clause 9.—This clause provides for validation of past levies and collections of tax under the Act up to the date of commencement of this Act.

Clause 10.—This clause seeks to exempt a dealer from liability to pay tax in respect of any sale effected by him during the period between the 10th day of November, 1964 (the date of the judgment of the Supreme Court in Yaddalam case) and the 9th day of June, 1969 [the date of commencement of Central Sales Tax (Amendment) Ordinance, 1969], or in respect of any portion of turnover relating to such sale if the dealer proves that he has, relying upon judicial pronouncements, not collected tax on such sale or such portion of turnover.

Clause 11.—This clause seeks to repeal the Central Sales Tax (Amendment) Ordinance, 1969 and make the usual saving provision.

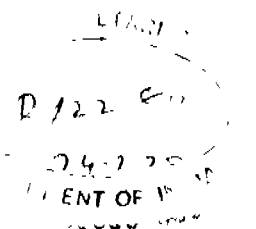
FINANCIAL MEMORANDUM

The Central Sales Tax Act, 1956 utilises the machinery in existence in States and Union territories for collection of sales tax. However, in the case of any State or part thereof in which local sales tax law is not in force, this would not be possible and accordingly sub-section (3) of existing section 9 of the Act confers powers on the Central Government to provide for such machinery in respect of such State or part thereof. The proviso to sub-section (2) of new section 9, which clause 6 seeks to substitute for existing section 9, seeks to continue these powers of the Central Government. The need for utilising these powers has not been felt up till now. However, it might become necessary to invoke this provision if at any stage, it is decided to collect Central sales tax in respect of inter-State sales emanating from a territory where there is no local sales tax. It is not possible to visualise clearly the expenditure that would be involved on this account. As there is no appreciable volume of inter-State trade from such territories, only a small staff, if at all necessary, would be required and the expenditure likely to be involved on this account may not exceed Rs. 25,000 per annum.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert a new section 8A in the principal Act. The new section provides expressly for certain deductions which may be allowed from the gross turnover of a dealer for the purposes of the Act. To provide for contingencies which may arise in future, the section seeks to authorise the Central Government to make rules providing for other deductions having regard to the prevalent market conditions, facility of trade and interests of consumers. Any such additional deductions would be to the advantage of the dealers. As the section lays down clearly the guidelines for providing for such additional deductions the delegation of legislative power is of a normal character.

2. Clause 6 of the Bill seeks to substitute a new section 9 for existing section 9 of the principal Act. The proviso to sub-section (2) of the new section [which merely re-enacts a similar provision contained in sub-section (3) of existing section 9] empowers the Central Government to make rules to provide for collection and enforcement of payment of tax under the Act in a State or part thereof where there is no local sales tax law. As the matters in respect of which rules can be made under the proviso pertain to matters of administrative detail and procedure, the delegation of legislative power is of a normal character.



BILL NO. 70 OF 1969

A Bill to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. Short title and commencement.
- (2) It shall be deemed to have come into force on the 19th day of July, 1969. Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “banking company” does not include a foreign company within the meaning of section 591 of the Companies Act, 1956;

(b) "existing bank" means a banking company specified in column 1 of the First Schedule, being a company the deposits of which, as shown in the return as on the last Friday of June, 1969, furnished to the Reserve Bank under section 27 of the Banking Regulation Act, 1949, were not less than rupees fifty crores;

10 of 1949.

(c) "corresponding new bank", in relation to an existing bank, means the body corporate specified against such bank in column 2 of the First Schedule;

(d) "Custodian" means the person who becomes, or is appointed, a Custodian under section 10;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "Tribunal" means the Tribunal constituted under section 7;

(g) words and expressions used herein and not defined but defined in the Banking Regulation Act, 1949, have the meaning respectively assigned to them in that Act.

10 of 1949.

CHAPTER II

TRANSFER OF THE UNDERTAKINGS OF EXISTING BANKS

Establish-
ment of
corres-
ponding
new
banks
and
business
thereof

3. (1) On the commencement of this Act, there shall be constituted such corresponding new banks as are specified in the First Schedule.

(2) The paid-up capital of every corresponding new bank constituted under sub-section (1) shall, until any provision is made in this behalf in any scheme made under section 13, be equal to the paid-up capital of the existing bank in relation to which it is the corresponding new bank.

(3) The entire capital of each corresponding new bank shall stand vested in and allotted to the Central Government.

(4) Every corresponding new bank shall be a body corporate with perpetual succession and a common seal and shall sue and be sued in its name.

(5) Every corresponding new bank shall carry on and transact the business of banking as defined in clause (b) of section 5 of the Banking Regulation Act, 1949, and may engage in one or more forms of business specified in sub-section (1) of section 6 of that Act, and shall have power to acquire and hold property, whether movable or immovable, for the purposes of its business and to dispose of the same.

10 of 1949.

(6) Every corresponding new bank shall establish a reserve fund to which shall be transferred the share premiums and the balance, if any, standing to the credit of the existing bank in relation to which it is the corresponding new bank, and such further sums, if any, as may be transferred in accordance with the provisions of section 17 of the Banking Regulation Act, 1949.

10 of 1949.

4. On the commencement of this Act, the undertaking of every existing bank shall be transferred to, and shall vest in, the corresponding new bank.

Under-
taking
of existing
banks to
vest in
corres-
ponding
new
banks.

5. (1) The undertaking of each existing bank shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests arising out of such property as were immediately before the commencement of this Act in the ownership, possession, power or control of the existing bank in relation to the undertaking, whether within or without India, and all books of accounts, registers, records and all other documents of whatever nature relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the existing bank in relation to the undertaking.

General
effect of
vesting.

(2) If, according to the laws of any country outside India, the provisions of this Act by themselves are not effective to transfer or vest any asset or liability situated in that country which forms part of the undertaking of an existing bank to, or in, the corresponding new bank, the affairs of the existing bank in relation to such asset or liability shall, on and from the commencement of this Act, stand entrusted to the chief executive officer for the time being of the corresponding new bank, and the chief executive officer may exercise all powers and do all such acts and things as may be exercised or done by the existing bank for the purpose of effectively winding up the affairs of that bank.

(3) The chief executive officer of the corresponding new bank shall, in exercise of the powers conferred on him by sub-section (2), take all such steps as may be required by the laws of any such country outside India for the purpose of effecting such transfer or vesting, and in connection therewith may either himself or through any person authorised by him in this behalf realise any asset and discharge any liability of the existing bank.

(4) Notwithstanding anything contained in sub-section (2), on the commencement of this Act, no person shall make any claim or demand or take any proceeding in India against any existing bank or any person acting in its name or on its behalf except in so far as may be necessary for enforcing the provisions of this section or except in so far as it relates to any offence committed by such person.

(5) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the commencement of this Act and to which the existing bank is a party or which are in favour of the existing bank shall be of as full force and effect against or in favour of the corresponding new bank, and may be enforced or acted upon as fully and effectually as if in the place of the existing bank the corresponding new bank had been a party thereto or as if they had been issued in favour of the corresponding new bank.

(6) If, on the date of commencement of this Act, any suit, appeal or other proceeding of whatever nature is pending by or against the existing bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the existing bank or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the corresponding new bank.

(7) Nothing in this Act shall be construed as applying to the assets, rights, powers, authorities and privileges and property, movable and immovable, cash balances and investments in any country outside India (and other rights and interests arising out of such property) of any existing bank operating in that country if, under the laws in force in that country, it is not permissible for a banking company, owned or controlled by Government, to carry on the business of banking there.

CHAPTER III

PAYMENT AND DETERMINATION OF COMPENSATION

Payment
of com-
pensation.

6. (1) The Central Government shall give compensation to each existing bank for the acquisition of its undertaking and such compensation shall be determined in accordance with the principle specified in the Second Schedule and in the manner hereinafter set out, that is to say,—

(a) where the amount of compensation can be fixed by agreement, it shall be determined in accordance with such agreement;

(b) where no such agreement can be reached, the Central Government shall refer the matter to the Tribunal within a period of three months from the date on which the Central Government and the existing bank fail to reach an agreement regarding the amount of compensation.

(2) Notwithstanding that separate valuations are calculated under the principles specified in the Second Schedule in respect of the several matters referred to therein, the amount of compensation to be given shall be deemed to be a single compensation to be given for the undertaking as a whole.

(3) The amount of compensation determined in accordance with the foregoing provisions shall be paid to each existing bank in promissory notes or stock certificates of the Central Government, issued and repayable at par, and maturing at the end of ten years from the date on which the compensation is paid and carrying interest at the rate of four and a half per cent. per annum:

Provided that where the amount of such compensation is not a multiple of one hundred rupees, any excess over the highest such multiple shall be paid by a cheque drawn on the Reserve Bank.

Constitu-
tion of
the
Tribunal.

7. (1) The Central Government may, for the purposes of this Act, constitute a Tribunal which shall consist of a Chairman and two other members.

38 of 1949.

(2) The Chairman of the Tribunal shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court, and, of the two other members of the Tribunal, one shall be a person who, in the opinion of the Central Government, has had experience of banking and the other shall be a person who is a Chartered Accountant within the meaning of the Chartered Accountants' Act, 1949.

(3) If, for any reason, a vacancy occurs in the office of the Chairman, or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2) and any proceeding may be continued before the Tribunal so constituted from the stage at which the vacancy had occurred.

(4) The Tribunal may for the purpose of determining any compensation payable under this Act, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

5 of 1908.

8. The Tribunal shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

Tribunal to have powers of a Civil Court.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents.

9. (1) The Tribunal shall have power to regulate its own procedure.

Procedure of the Tribunal.

(2) The Tribunal may hold the whole or any part of its inquiry *in camera*.

(3) Any arithmetical or clerical error in any order of the Tribunal or any error arising therein from an accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.

CHAPTER IV

MANAGEMENT OF CORRESPONDING NEW BANKS

19. (1) The head office of each corresponding new bank shall be at such place as the Central Government may, by Notification in the Official Gazette, specify in this behalf, and, until any such place is so specified, shall be at the place at which the head office of the existing bank, in relation to which it is the corresponding new bank, is on the date of the commencement of this Act, located.

Head office and branches.

(2) The general superintendence and direction of the affairs and business of a corresponding new bank shall, until any provision to the contrary is made under any scheme made under section 13, vest in a Custodian, who shall be the chief executive officer of that bank and may exercise all powers and do all acts and things as may be exercised or done by that bank.

(3) The Chairman of the existing bank holding office as such immediately before the commencement of this Act, shall be the Custodian of the corresponding new bank and shall receive the same emoluments as he was receiving immediately before such commencement :

Provided that the Central Government may, if it is of opinion that it is necessary so to do, appoint any other person as the Custodian of a corresponding new bank and the Custodian so appointed shall receive such emoluments as the Central Government may specify in this behalf.

(4) The Custodian shall hold office during the pleasure of the Central Government.

Corresponding new bank to be guided by the directions of the Central Government.

11. (1) Every corresponding new bank shall, in the discharge of its function, be guided by such direction in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give.

(2) If any question arises whether a direction relates to a matter of policy involving public interest, it shall be referred to the Central Government and the decision of the Central Government thereon shall be final.

Advisory Board to aid and advise the Custodian.

12. (1) There shall be an Advisory Board to aid and advise the Custodian in the discharge of his duties:

Provided that the Advisory Board shall be dissolved on the constitution of a Board of Directors in pursuance of a scheme made under clause (b) of sub-section (2) of section 13:

Provided further that the Central Government may, if it is of opinion that it is necessary so to do, dissolve the Advisory Board at any other time.

(2) The Advisory Board shall consist of such persons as the Central Government may, by notification in the Official Gazette, appoint.

Power of Central Government to make scheme.

13. (1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—

(a) the capital structure of the corresponding new bank, so however that the paid-up capital of any such bank shall not be in excess of rupees fifteen crores;

(b) the constitution of the Board of Directors, by whatever name called, of the corresponding new bank and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c) such incidental, consequential and supplemental matters as may be necessary to carry out the provisions of this Act.

(3) The Central Government may, after consultation with the Reserve Bank, make a scheme to amend or vary the scheme made under sub-section (1).

CHAPTER V

MISCELLANEOUS

14. (1) Every corresponding new bank shall cause its books to be closed and balanced on the 31st day of December of each year and shall appoint, with the previous approval of the Reserve Bank, auditors for the audit of its accounts.

Closure
of ac-
counts
and
disposal
of
profits.

1 of 1956.

(2) Every auditor of a corresponding new bank shall be a person who is qualified to act as an auditor of a company under section 226 of the Companies Act, 1956, and shall receive such remuneration as the Reserve Bank may fix in consultation with the Central Government.

(3) Every auditor shall be supplied with a copy of the annual balance-sheet and profit and loss account and a list of all books kept by the corresponding new bank, and it shall be the duty of the auditor to examine the balance-sheet and profit and loss account with the accounts and vouchers relating thereto, and in the performance of his duties, the auditor—

(a) shall have, at all reasonable times, access to the books, accounts and other documents of the corresponding new bank,

(b) may, at the expense of the corresponding new bank employ accountants or other persons to assist him in investigating such accounts, and

(c) may, at the expense of the corresponding new bank employ any member of the Advisory Board or any officer or employee of the corresponding new bank.

(4) Every auditor of a corresponding new bank shall make a report to the Central Government upon the annual balance-sheet and accounts and in every such report shall state—

(a) whether, in his opinion, the balance-sheet is a full and fair balance-sheet containing all the necessary particulars and is properly drawn up so as to exhibit a true and fair view of the affairs of the corresponding new bank, and in case he had called for any explanation or information, whether it has been given and whether it is satisfactory;

(b) whether or not the transactions of the corresponding new bank, which have come to his notice, have been within the powers of that bank;

(c) whether or not the returns received from the offices and branches of the corresponding new bank have been found adequate for the purpose of his audit;

(d) whether the profit and loss account shows a true balance of profit or loss for the period covered by such account; and

(e) any other matter which he considers should be brought to the notice of the Central Government.

(5) The report of the auditor shall be verified, signed and transmitted to the Central Government in such manner as may be prescribed.

(6) The auditor shall also forward a copy of the audit report to the corresponding new bank and to the Reserve Bank.

(7) After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and all other matters for which provision is necessary under any law, or which are usually provided for by banking companies, a corresponding new bank shall transfer the balance of profits to the Central Government.

Removal
from
office of
directors,
etc.

15. (1) Every person holding office as Chairman, managing or other director of an existing bank shall, on the commencement of this Act, be deemed to have vacated office:

Provided that nothing in this sub-section shall be construed as preventing any existing bank from constituting a Board of Directors or appointing any managing or other director with a view to transacting the following business, namely:—

(a) registration of the transfer or transmission of shares;

(b) arriving at an agreement about the amount of compensation payable under this Act or appearing before the Tribunal for obtaining a determination as to the amount of compensation;

(c) distribution to each shareholder of the amount of compensation received by it under this Act for the acquisition of its undertaking;

(d) carrying on the business of banking in any country outside India if under the law in force in that country any bank, owned or controlled by Government, is prohibited from carrying on the business of banking there;

(e) carrying on any business other than the business of banking:

Provided further that such Board of Directors or managing or other director may be appointed at a meeting of the shareholders of the existing bank convened—

(i) in accordance with the provisions of section 169 of the Companies Act, 1956, or

(ii) by the Central Government, where the shareholders of the existing bank have not convened such meeting.

(2) The Central Government may, if it is of the opinion that it is necessary so to do, authorise an existing bank to bear such reasonable expenditure for discharging any of the functions referred to in clause (a), (b) or (c) of the proviso to sub-section (1) and may further authorise the corresponding new bank to advance any amount in connection therewith to the existing bank and any amount so advanced shall be recouped from out of the compensation payable to the existing bank under this Act.

(3) Save as otherwise provided in sub-section (1), all officers and other employees of an existing bank shall become, on the commencement of this Act, officers and employees of the corresponding new bank and shall hold their offices or services in that bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to them if the undertaking of the existing bank had not been transferred to and vested in the corres-

ponding new bank and continue to do so unless and until their employment in the corresponding new bank is terminated or until their remuneration, terms or conditions are duly altered by the corresponding new bank.

(4) For the persons who immediately before the commencement of this Act were the trustees for any pension, provident, gratuity or other like fund constituted for the officers or other employees of an existing bank, there shall be substituted as trustees such persons as the Central Government may, by general or special order, specify.

14 of
1947.

(5) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee from an existing bank to a corresponding new bank shall not entitle such officer or any other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

16. (1) Every corresponding new bank shall observe, except as otherwise required by law, the practices and usages customary among bankers, and, in particular, it shall not divulge any information relating to or to the affairs of its constituents except in circumstances in which it is, in accordance with law or practice and usage customary among bankers, necessary or appropriate for the corresponding new bank to divulge such information.

Obligations
as to
fidelity
and
secrecy.

(2) Every director, member of a local board or a committee, or auditor, adviser, officer or other employee of a corresponding new bank shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

(3) Every Custodian of a corresponding new bank shall, as soon as possible, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

45 of
1860.

17. Every Custodian of a corresponding new bank shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.

Custodian
to be
public
servant.

18. (1) All acts done by the Custodian, acting in good faith, shall, notwithstanding any defect in his appointment or in the procedure, be valid.

Certain
defects
not to
invalidate
acts or
Proceed-
ings.

(2) No act or proceeding of any Board of Directors or a local board or committee of a corresponding new bank shall be invalid merely on the ground of the existence of any vacancy, or defect in the constitution of, such board or committee, as the case may be.

(3) All acts done by a person acting in good faith as a director or member of a local board or committee of a corresponding new bank shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in any law for the time being in force:

Provided that nothing in this section shall be deemed to give validity to any act done by a director or member of a local board or committee of a corresponding new bank after his appointment has been shown to the corresponding new bank to be invalid or to have terminated.

Indemnity.

19. (1) Every Custodian of a corresponding new bank and every officer of the Central Government and of the Reserve Bank shall be indemnified by such bank against all losses and expenses incurred by him in or in relation to the discharge of his duties except such as have been caused by his own wilful act or default.

(2) A director or member of a local board or committee of a corresponding new bank shall not be responsible for any loss or expense caused to such bank by the insufficiency or deficiency of the value of, or title to, any property or security acquired or taken on behalf of the corresponding new bank, or by the insolvency or wrongful act of any customer or debtor, or by anything done in or in relation to the execution of the duties of his office, unless such loss, expense, insufficiency or deficiency was due to any wilful act or default on the part of such director or member.

References to existing banks on and from the commencement of this Act.

20. Any reference to any existing bank in any law, other than this Act, or in any contract or other instrument shall be construed as a reference to the corresponding new bank in relation to it.

Dissolution.

21. (1) Notwithstanding anything contained in any other law for the time being in force, an existing bank shall, on such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, stand dissolved.

(2) No provision of law relating to winding up of corporations shall apply to a corresponding new bank and no corresponding new bank shall be placed in liquidation save by order, of the Central Government and in such manner as it may direct.

Power to make rules.

22. (1) The Central Government may, by notification in the Official Gazette, make such rules as it may think fit to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the business of the Advisory Board shall be transacted and the procedure to be followed at the meetings thereof;

(b) fees and allowances which may be paid to members of the Advisory Board for attending any meetings of the Board or of any Committee that may be constituted by the Board;

(c) the formation of any Committee whether of the Advisory Board or of the corresponding new bank and the delegation of powers and functions to such Committees;

(d) any other matter which is required to be, or may be, prescribed.

23. Every rule and every scheme made by the Central Government under this Act shall be laid, as soon as may be, after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or scheme or both Houses agree that the rule or scheme should not be made, the rule or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme, as the case may be.

Rules and schemes to be laid before Parliament.

24. (1) The Board of Directors of a corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, make regulations, not inconsistent with the provisions of this Act and any rule or scheme made thereunder, to provide for all matters for giving effect to the provisions of this Act.

Power to make Regulations.

(2) In particular and without prejudice to the generality of the foregoing power, the regulations may provide for all or any of the following matters, namely:—

(a) the powers, functions and duties of local boards and restrictions, conditions or limitations, if any, subject to which they may be exercised or performed, the formation and constitution of local committees and committees of local board (including the number of members of any such committee), the powers, functions and duties of such committees, the holding of meetings of local committees and committees of local boards and the conduct of business thereat;

(b) the manner in which the business of the local boards shall be transacted and the procedure in connection therewith;

(c) the delegation of powers and functions of the board of directors of a corresponding new bank to the general manager, director, officer or other employee of that bank;

(d) the conditions or limitations subject to which the corresponding new bank may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service;

(e) the duties and conduct of officers, advisers and other employees of the corresponding new bank;

(f) the establishment and maintenance of superannuation, pension, provident or other funds for the benefit of officers or employees of the corresponding new bank or of the dependants of such officers or employees and the granting of superannuation allowances, annuities and pensions payable out of such funds;

(g) the conduct and defence of legal proceedings by or against the corresponding new bank and the manner of signing pleadings;

(h) the provision of a seal for the corresponding new bank and the manner of effect of its use;

(i) the form and manner in which contracts binding on the corresponding new bank may be executed;

(j) the conditions and the requirements subject to which loans or advances may be made or bills may be discounted or purchased by the corresponding new bank;

(k) the persons or authorities who shall administer any pension, provident or other fund constituted for the benefit of officers or employees of the corresponding new bank or their dependants;

(l) the preparation and submission of statements of programmes of activities and financial statements of the corresponding new bank and the period for which and the time within which such statements and estimates are to be prepared and submitted; and

(m) generally for the efficient conduct of the affairs of the corresponding new bank.

(3) Until any regulation is made under sub-section (1), the articles of association of the existing bank and every regulation, rule, bye-law or order made by the existing bank shall, if in force at the commencement of this Act, be deemed to be the regulations made under sub-section (1) and shall have effect accordingly and any reference therein to any authority of the existing bank shall be deemed to be a reference to the corresponding authority of the corresponding new bank.

Amend-
ment
of
certain
enact-
ments.

25. (1) In the Banking Regulation Act, 1949,—

(a) in section 34A, in sub-section (3), for the words “and any subsidiary bank”, the words, figures and brackets “a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, and any subsidiary bank” shall be substituted;

(b) in section 36AD, in sub-section (3), for the words “and any subsidiary bank”, the words, figures and brackets “a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, and any subsidiary bank” shall be substituted;

(c) section 51, for the words “or any other banking institution notified by the Central Government in this behalf”, the words, figures and brackets “or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, or any other banking institution notified by the Central Government in this behalf” shall be substituted.

(2) In the Industrial Disputes Act, 1947, in section 2, in clause (bb) for the words “and any subsidiary bank” the words, figures and brackets “a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, and any subsidiary bank” shall be substituted.

(3) In the Banking Companies (Legal Practitioners' Clients' Accounts) Act, 1949, in section 2, in clause (a), for the words “and any subsidiary bank”, the words, figures and brackets “a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, and any subsidiary bank” shall be substituted.

10 of
1949.

14 of 1947.

46 of 1949.

26. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may make such order, not inconsistent, with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty:

Removal of difficulties.

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

3 of 1969.

27. (1) The Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken, including any order made, notification issued or direction given, under the said Ordinance shall be deemed to have been done, taken, made issued or given, as the case may be, under the corresponding provision of this Act.

—————

THE FIRST SCHEDULE

(See sections 2, 3 and 4)

Column 1	Column 2
<i>Existing bank</i>	<i>Corresponding new bank</i>
Central Bank of India Limited.	Central Bank of India.
Bank of India Limited.	Bank of India.
Punjab National Bank Limited.	Punjab National Bank.
Bank of Baroda Limited.	Bank of Baroda.
United Commercial Bank Limited.	United Commercial Bank.
Canara Bank Limited.	Canara Bank.
United Bank of India Limited.	United Bank of India.
Dena Bank Limited.	Dena Bank.
Syndicate Bank Limited.	Syndicate Bank.
Union Bank of India Limited.	Union Bank of India.
Allahabad Bank Limited.	Allahabad Bank.
Indian Bank Limited.	Indian Bank.
Bank of Maharashtra Limited.	Bank of Maharashtra.
Indian Overseas Bank Limited.	Indian Overseas Bank.

THE SECOND SCHEDULE

(See section 6)

PRINCIPLES OF COMPENSATION

1. The compensation to be paid by the Central Government to each existing bank in respect of the acquisition of the undertaking thereof shall be an amount equal to the sum-total of the value of the assets of the existing bank as on the commencement of this Act, calculated in accordance with the provisions of Part I, less the sum total of the liabilities computed and obligations of the existing bank calculated in accordance with the provisions of Part II.

Part I.—Assets

For the purposes of this Part, "assets" means the total of the following:—

(a) the amount of cash in hand and with the Reserve Bank and the State Bank of India (including foreign currency notes which shall be converted at the market rate of exchange);

(b) the amount of balances with any bank, whether on deposit or current account, and money at call and short notice, balances held outside India being converted at the market rate of exchange;

Provided that any balances which are not realisable in full shall be deemed to be debts and valued accordingly;

(c) the market value, as on the day immediately before the commencement of this Act, of any securities, shares, debentures, bonds and other investments, held by the bank concerned.

Explanation.—For the purposes of this clause—

(i) securities of the Central and State Governments [other than the securities specified in clauses (ii) and (iii) of this *Explanation*] maturing for redemption within five years from the commencement of this Act shall be valued at the face value or the market value, whichever is higher;

(ii) securities of the Central Government, such as Post Office Certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Savings Schemes of the Central Government, shall be valued at their face value or the encashable value as on the day immediately before the commencement of this Act, whichever is higher;

(iii) where the market value of any Government security such as the zamindari abolition bond or other similar securities in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate, the securities shall be valued at such an amount as is considered reasonable having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any

security, issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors;

(iv) where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period;

(v) where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;

(d) the amount of advances (including loans, cash credits, overdrafts, bills purchased and discounted) and other debts, whether secured or unsecured, to the extent to which they are reasonably considered recoverable, having regard to the value of the security, if any, the operation on the account, the reported worth and respectability of the borrower, the prospects of realisation and other relevant considerations;

(e) the market value of any land or buildings;

(f) the total amount of the premia paid, in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease;

(g) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures and fittings;

(h) the market or realisable value, as may be appropriate, of other assets appearing on the books of the bank, no value being allowed for capitalised expenses, such as share selling commission, organisational expenses and brokerage, losses incurred and similar other items.

Part II.—Liabilities

For the purposes of this Part, "liabilities" means the total amount of all outside liabilities existing at the commencement of this Act, and all contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources on or after the date of commencement of this Act.

CERTAIN DIVIDENDS NOT TO BE TAKEN INTO ACCOUNT

2. No separate compensation shall be payable for any dividend in dividend in respect of any period immediately preceding the commencement of this Act:

Provided that nothing in this paragraph shall preclude the payment of any dividend which was declared before such commencement.

THE THIRD SCHEDULE

(See sub-sections (2) and (3) of section 16)

DECLARATION OF FIDELITY AND SECRECY

I,....., do hereby declare that I will faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as Custodian, Director, member of Local Board, member of Local Committee, auditor, adviser, officer, or other employee (as the case may be) of the* and which properly relate to the office or position in the said* held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the * or to the affairs of any person having any dealing with the * ; nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the * and relating to the business of the * or to the business of any person having any dealing with the *.

*Name of corresponding new bank to be filled in.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to replace the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969.

2. The banking system touches the lives of millions and has to be inspired by a larger social purpose and has to subserve national priorities and objectives, such as rapid growth in agriculture, small industries and exports, raising of employment levels, encouragement of new entrepreneurs and the development of backward areas. For this purpose, it is necessary for Government to take direct responsibility for the extension and diversification of banking services and for the working of a substantial part of the banking system. Accordingly, the Bill seeks to nationalise 14 major Indian scheduled banks with deposits of Rs. 50 crores or more.

3. The provisions of the Bill are explained in detail in the notes on clauses.

NEW DELHI;
The 23rd July, 1969.

P. GOVINDA MENON.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. F.4(43)-BC/67 dated the 23rd July, 1969, from Shri P. Govinda Menon, Minister of Law to the Secretary, Lok Sabha.]

* * * * *

The Chief Justice of India (Shri M. Hidayatullah) discharging the functions of the President having informed of the subject matter of the proposed Banking Companies (Acquisition and Transfer of Undertakings) Bill, 1969, recommends the introduction of the Bill in the Lok Sabha under Clause (1) of Article 117 and its consideration under Clause (3) of Article 117 of the Constitution.

* * * * *

Notes on clauses

Clause 2 seeks to insert definitions of certain new expressions in the Act. The proposed definitions are self-explanatory.

Clause 3 seeks to provide for the constitution of 14 new banks with the share capital of each bank being allotted to the Central Government. Each new bank shall be a body corporate and shall carry on the business of banking.

Clause 4 seeks to provide for the transfer and vesting of 14 existing banks, as mentioned in the First Schedule, in the corresponding new banks.

Clause 5 clarifies the general effect of vesting so that the business of each new bank continues uninterrupted.

Clause 6 seeks to provide for the payment of compensation to each existing bank for the acquisition of the undertaking in accordance with the principles specified in the Second Schedule. Such compensation will be paid in the Central Government promissory notes or stock certificates at par of a maturity of 10 years at $4\frac{1}{2}$ per cent. interest. If no agreement is reached with the bank regarding the quantum of compensation, the clause provides for the reference of the question to the Tribunal.

Clause 7 seeks to provide for the constitution of a Tribunal consisting of a Chairman and two other Members.

Clause 8 seeks to confer the powers of a Civil Court on the Tribunal.

Clause 9 seeks to confer on the Tribunal the power to regulate its own procedure.

Clause 10 seeks to specify the head office of each bank and to provide for the appointment of the Chairman of an existing bank as the Custodian for the new bank until the constitution of Board of Directors in terms of the scheme that may be framed by the Central Government under section 13 of the Act. It also seeks to empower the Central Government to appoint any other person as a Custodian of the new bank, if the Central Government so considers it necessary.

Clause 11 seeks to provide for the issue of directions by the Central Government in regard to matters of policy involving public interest.

Clause 12 seeks to provide for the constitution of an Advisory Board pending the constitution of a Board of Directors in pursuance of a scheme that may be framed under section 13 of the Act.

Clause 13 empowers the Central Government to make a scheme for the capital structure of each bank and for the constitution of the Board.

of Directors for the new bank and all other matters which are necessary for carrying out the provisions of the Act.

Clause 14 contains provisions regarding accounts and audit of each bank.

Clause 15 provides for the vacation of office of the existing directors of each bank, but allows it to constitute a Board of Directors for the transaction of certain specified types of business. The more important of which are the distribution to each shareholder of the amount of compensation received by it and for carrying on the business of banking in any country outside India if under the law of that country the transfer of business to a bank owned by the government is not permissible.

Clause 16 seeks to place an obligation on every new bank as to the fidelity and secrecy relating to accounts of the individual constituents of every bank.

Clause 17 seeks to make every Custodian of new bank a public servant for the purposes of Chapter IX of the Indian Penal Code.

Clause 18 seeks to provide protection for anything done in good faith to the Custodian/Board of Directors for any action irrespective of any defect in their appointment.

Clause 19 seeks to provide indemnity to every Custodian of the bank and officer of the Central Government or the Reserve Bank against all losses not wilfully caused.

Clause 20 provides for the construction of references.

Clause 21 provides for the dissolution of existing bank.

Clause 22 to 24 provide for the rule and regulation making power of the Central Government.

Clause 25 provides for the application of certain enactments to the new banks.

Clause 26 empowers the Central Government to make orders to remove any difficulties in the application of the Act.

Clause 27 provides for the repeal of the Ordinance.

FINANCIAL MEMORANDUM

Clauses 4 and 6 provide for the acquisition of the undertaking of the existing banks and the payment of compensation on the basis of the market value of the assets less the outside liabilities in accordance with the principles set out in the Second Schedule. The compensation is payable in the form of marketable Central Government securities to be issued at par. Clause 7 provides for the constitution of a Tribunal, consisting of a chairman and two other members to determine the compensation payable in the case of any existing bank if the amount arrived at in accordance with provisions in the Second Schedule and offered by the Central Government is not acceptable to that bank.

2. The compensation will be payable with reference to the actual assets and liabilities of the existing banks as on the date of the commencement of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969. The value of these assets and the extent of the liabilities will have to be ascertained after an investigation and scrutiny of the records of the existing banks and may also have to be settled by the Tribunal if a reference is made to the Tribunal under clause 7 of the Bill. It is not possible at this stage to indicate the precise amount of the compensation, which will be payable by the Central Government but it is estimated that having regard to the total amount of the assets and liabilities of the fourteen existing banks, the compensation payable for the acquisition of their undertakings may be about Rs. 75 crores. This amount may have to be paid by the Central Government over a period of two to three years but it is not possible to indicate at this stage the exact quantum of compensation that may have to be disbursed in the current or the following financial years.

3. As regards recurring expenditure, this will arise out of interest on Government securities paid for compensation. The rate of interest specified in the Bill is 4.50 per cent. for a maturity of ten years. On this basis the amount of the interest liability every year will be Rs. 3.375 crores.

4. As regards the expenditure on the setting up of a Tribunal, this is likely to be incurred only if such a Tribunal is set up in the event of an agreement not being reached with any of the existing banks. If a Tribunal is set up, recurring expenditure at the rate of about Rs. 3 lakhs per annum may be incurred during the period for which it continues to function. The non-recurring expenditure is not likely to exceed Rs. 50,000.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill empowers the Central Government to make a scheme in consultation with the Reserve Bank for carrying out the provisions of the Act. The scheme will *inter alia* provide for matters relating to capital structure of the corresponding new bank, the constitution of the Board of Directors and such incidental or consequential matters as may before both Houses of Parliament and every such scheme be subject to modification or annulment by Parliament.

Clause 14 empowers the Central Government to prescribe the manner of verification and transmission of the report of the auditor.

Clause 22 of the Bill empowers the Central Government to make rules to carry out the purposes of the Act. The matters in respect of which such rules may be made, *inter alia*, relate to the manner in which the business of the Advisory Board shall be transacted, fees and allowances etc. which may be paid to the members of the Advisory Board, the formation of any committee of the Advisory Board or of the corresponding new bank and for similar matters. Every rule made by the Central Government shall be laid before both Houses of Parliament and shall be subject to modification or annulment by Parliament.

Clause 24 empowers the Board of Directors of a new bank to frame regulations (for the transaction of its business) in consultation with the Reserve Bank and with the previous sanction of the Central Government. Such regulations shall not be inconsistent with the provisions of the Act or the rules made thereunder to carry out the purposes of the Act.

The matters in respect of which any scheme, rule and regulation may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character